



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/599,977

02/21/2008

Anne Butterly

2730.009

7639

21176

7590

05/25/2012

SUMMA, ADDITON & ASHE, P.A.  
11610 NORTH COMMUNITY HOUSE ROAD  
SUITE 200  
CHARLOTTE, NC 28277

EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

05/25/2012

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,977	<b>Applicant(s)</b> BUTTERLY ET AL.	
	<b>Examiner</b> ALISSA TOMPKINS	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1,3-10 and 15-18 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1, 3-10 and 15-18 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.                                                          | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment filed on 12/15/2011 has been received. Claims 1, 3-10, and 15-18 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 3-10, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito (U.S. 2002/0095711).**

As for claim 1, Saito discloses a disposable absorbent article (Figure 1) (Paragraph 31) comprising a spun lace nonwoven web 22 (Paragraph 39), wherein the absorbent article is substantially moisture free. The spun lace nonwoven web is impregnated with a dye retainer as best described by the applicant. The dye retainer, which is considered to be the innermost layer of the three layer spun bonded fabric of the nonwoven web (Paragraph 56) absorbs any dye in the web and prevents dye

Art Unit: 3765

penetrating through the disposable absorbent article. The absorbent article is considered to take the form of a cape or apron.

As for claim 3, wherein a liquid proof membrane layer is provided on one surface of the web (Paragraphs 56-58).

As for claim 4, wherein a liquid proof membrane layer is provided on one surface of the web, and the liquid proof membrane layer comprises a plastic film layer (Paragraph 58).

As for claim 5, wherein a liquid proof membrane layer is provided on one surface of the web, and the liquid membrane layer comprises a layer of polyethylene film (Paragraph 58).

As for claim 6, wherein the web comprises between 50 and 100 % rayon and up to 30% polyester. (Paragraph 39). Saito states that 30-90% of thermosetting resin fibers can be made of polyester, therefore 30% could be polyester, while 10-70% of absorbent fibers could be made from rayon, therefore 50-70% falls in the claimed range of 50-100% percent.

As for claim 7, Saito doesn't specifically state that the web is formed by hydro entanglement, but it is well known in the art that spun lace nonwovens are formed by hydro entanglement.

As for claim 8, Saito does not explicitly state what the density of the nonwoven web is, but Saito does contain that same percentage of materials as claimed and as stated in the applicant's specification (50-100% rayon and up to 30% polyester) and would therefore have a density of between 30 and 80 g/m squared (Paragraph 39). It is

Art Unit: 3765

also noted that the applicant has not provided any criticality in the specification for the claimed density.

As for claim 9, wherein the web is formed of hydrophilic fibers (Paragraph 39).

As for claim 10, wherein the web is formed from a recyclable material (and Paragraphs 31 and 39).

As for claim 15, wherein the article is a cape or an apron and the cape is adapted to fit around a neck of a user (Figure 1, see 12 and 13).

As for claim 16, Saito discloses a kit (Figure 1) comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

As for claim 17, Saito discloses a hair dye kit comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

As for claim 18, Saito discloses a head lice kit comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

### ***Response to Arguments***

Applicant's arguments filed 12/15/2011 have been fully considered but they are not persuasive.

Applicant submits that Saito never uses the word “dye” to describe the invention. Although Saito may not specifically use the word “dye”, it is brought to the applicant's attention that the specification of the present invention on page 15, 2<sup>nd</sup> paragraph state that "the fabric may be impregnated with a dye retainer or the like. The properties of

Art Unit: 3765

this spun lace material enable a thin film of plastic type material to be coated on one surface of the spun lace fiber material, so as to form a liquid proof membrane on one side, while maintaining absorbency on the other." As noted above, Saito discloses a spun bonded fabric having a three layer structure including a nonwoven fabric, a thermoplastic resin sheet and a nonwoven fabric. One of the nonwoven fabric sheets is considered a dye retainer as best described by the applicant. If the applicant is trying to infer the process of dye retaining a fabric, method claims may be necessary.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3765

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on 571-272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/  
Examiner, Art Unit 3765

Application/Control Number: 10/599,977  
Art Unit: 3765

Page 7